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By J. Clay Smith, Jr.

1

Thirty years ago, on May 17, 1954, the United States Supreme Court ruled in the first of two *Brown* opinions, that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." By this decision, the Supreme Court joined the resistance against inequality in the public education of Black people. Soon after, the question asked was: How rapidly must America eradicate its apartheid public educational system? In a second *Brown* decision, May 31, 1955, the Supreme Court answered the question with these words: "With all deliberate speed."

As the years passed, the concept of "with all deliberate speed" began to mean "right now" to Black Americans and "when we can get to it" to some white communities. The *Brown* opinions had declared that segregation in public education was unconstitutional. The American citizens living within the several states had to functionally carry out the Court's mandate.

2

Anniversaries of Supreme Court decisions usually don't spark celebration. However, I felt a sense of celebration in Topeka, Kansas, on May 17, 1984, as a participant in the 30th Anniversary commemoration of *Brown* at Washburn University School of Law.

Among the participants in the two-day celebration were several of the parents of the original plaintiffs, including Viola Montgomery, the mother of Linda Brown (the lead plaintiff whose father, the Rev. Oliver Brown [deceased] brought this case on her behalf); Charles Scott, Sr., one of the lawyers who filed suit against the Topeka Board of Education on February 28, 1951, and many Black and white members of the community whose lives were affected by the *Brown* decision.

A sculpture entitled, "Common Justice," commissioned by a special committee to commemorate the 1954 decision and the lawyers who brought the lawsuit, was dedicated and stands today in the lobby of the Washburn University School of Law.

The academic component of the occasion was inspiring. Charles Scott, Sr., recounted the days of "separate but equal" in Topeka and the adverse effect this dual system of education had on Black children. He described how the original plaintiffs were carefully selected to bring this litigation and how courageous the parents and the children were whose commitment to equal educational opportunity would alter the course of American law.

Arthur A. Benson, II, discussed the current litigation referred to as *Brown III*. This litigation was brought in 1979 by Linda Brown Smith on behalf of her children. Like her father before her, Mrs. Smith has charged in *Brown III* that the Topeka school system has violated her children's rights to an equal and integrated education.

Benson, the lead attorney in *Brown III*, dampened my sense of celebration when he indicated that once again segregation was about to overtake the Topeka educational system. He cited gerrymandering of attendance borders, transferring and assigning of Black teachers to majority Black schools, and failure to keep up facilities in predominantly Black schools and to use busing as a means of desegregation.

3

The story of education for Black Americans does not begin with *Brown v. Board of Education*. It begins with the untold, unsung and unknown heroes and heroines of Afro-America. It begins with the definition of human dignity and liberty, which formed the basis for the formulation of the Declaration of Independence, the 13 colonies, the *Federalist Papers*, and the ratification of the Constitution. The episodes of this story are legion with references to the enactment by state legislatures of the Black Codes, which codified and made a criminal act the teaching of any Black person to read and write.

The story has a theme that relates back to the original draft of the Constitution, wherein is embodied the concept that a slave was not to be recognized in any way other than as chattel—that is, a piece of physical property. This theme created a drama which would play itself out by the prosecution and conviction of those white and Black Americans who dared to declare an intellectual disobedience to unjust laws.

It was the law that created and protected the characters in this drama when they donned the robes of Klansmen to taunt and brutalize Blacks who, despite the unjust laws, stole away in the night to learning centers throughout the South to learn how to read and write as their masters slept. This "stolen" knowledge enabled them to write articles and letters, to speak out against, or publicly condemn apartheid in America.

In 1896, more than 50 years before the

Brown decision, the United States Supreme Court had sanctioned a dual system of public education, one for whites, the other for Blacks, in the *Plessy v. Ferguson* decision. The doctrine of "separate but equal" announced in *Plessy* was an effort to avoid the inevitable doctrine of "together and equal." Nonetheless, the United States Supreme Court gave Black Americans half of a loaf by requiring that public education for Black Americans be equal but separate from that of whites.

Though the law was clear on what Black people were forbidden to do, the desire to learn or the customs of the community drove Black people to defy that law. The more that educational opportunities were denied to Blacks, the more they hungered for it. And this hunger led the establishment to create schools to educate Blacks in an effort to quell the irrepressible eruption and defiance of a people—Black people—who associated education with human dignity and liberty.

Hence the proliferation of a segregated public educational system characterized by one-room schoolhouses, poor facilities and educational hand-me-downs. The segregated system was characterized by discriminatory pay scales for Black teachers, and a tax system which favored the rich and disfavored the poor in its allocation of tax dollars for public education.

The *Brown* decision sought to bring Black and white together. In some states, integration was achieved without a blink of an eye; in other states, integration was achieved by the barrel of a gun and with the assistance of federal troops. Who would have thought that a human rights issue like public education would cause then President Dwight D. Eisenhower to exercise his obligation as commander-in-chief of the armed forces to enforce a federal court order in Little Rock, Arkansas, so that Black children could receive a decent education? What will historians say on the 50th and the 100th anniversary of *Brown* when they are shown the vicious faces of the men and women, the old and young, the mothers, fathers

and grandparents screaming indignities at the nine Black children who walked bravely through a mob of white citizens attempting to keep them out of a publicly-supported educational institution in Little Rock? These episodes in American history will be reported with shame and regret. There is no other way that they can be remembered.

4

America is indebted to members of the legal profession—both Black and white, men and women—who fought the legal battles in several of the cases culminating with *Brown*. Included among these lawyers are Charles L. Black, Jr., Harold Boulware, Robert T. Duncan, Julian R. Dugas, Jack Greenberg, George E. C. Hayes, Oliver W. Hill, Phineas Indritz, George M. Johnson, Dorsey E. Lane, Thurgood Marshall, Loren Miller, Harry B. Merican, William R. Ming, Jr., Constance Baker Motley, James M. Nabrit, Jr., David E. Pinsky, Louis H. Pollak, Louis L. Redding, Charles W. Quick, Frank D. Reeves, Herbert O. Reid, Sr., Spottswood W. Robinson, III, Leonard W. Schroeter, Charles S. Scott, John Scott, Authur D. Shores, A. T. Walden, James A. Washington, Jack B. Weinstein, and lastly Charles Hamilton Houston, who in the 1940s laid the groundwork for the modern civil rights movement but who died before the *Brown* decision was rendered.

The legal battles to fully implement the mandate of *Brown* continue today. Indeed, the terms "busing" and "pupil imbalance," concepts growing out of *Brown*, are no longer educational in nature, but have become political agendas. In fact, while integration has clearly become the theme of our national consciousness, school systems in many parts of the nation are more segregated today than they were in 1954.

The accusations made today by civil rights groups are repetitive of yesteryear. The mandates of *Brown* remain the supreme law of the land; the implementation of the *Brown* decision remains unfulfilled.

Professor Herbert O. Reid, Sr., and Frankie Foster-Davis, in an article prepared for *The Journal of Negro Education*, state: The "final question inherent in the judicial hand-bag of the school segregation dilemma is the duration of desegregation and the possibility of resegregation."

Is resegregation a real possibility? The clouds of resegregation have begun to form in several communities due to the establishment of all-white private academies, and the white flight from inner-city schools. The effect of this conduct has caused reduced funding for some school districts and has affected the ability of school systems to attract and to retain good teachers. These clouds will roll away only if we commit ourselves to the cause of equal justice for all under law as the values of the *Brown* decision contemplated. □

J. Clay Smith, Jr., is professor of law at Howard University. Sources for this article include the following:

M. Possley, "54 integration victory still not settled," *Chicago Tribune*, May 17, 1984, at 4, col. 1; D. Fink, "Slow gains since historic court ruling," *USA Today*, May 17, 1984, at 1, col. 3; "The Enduring Promise of 'Brown'," *N.Y. Times*, May 17, 1984, at 26, col. 1; F. Flaherty, "Brown, Part III," *National Law Journal*, May 14, 1984, at 1, col. 1; M. Hawver, "King praises leaders of fight for integration," *The Topeka Capital-Journal*, May 18, 1984, at 1, col. 3; C. Walteson, "Law Society remembers Brown," *The Hilltop*, May 20, 1984, at 3, col. 1.